

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1915.

No. 2853.

263

No. 9, Special Calendar
January Term 1916

No. 9, SPECIAL CALENDAR.

UNITED STATES OF AMERICA ON THE RELATION OF
WILLIAM F. ARANT, APPELLANT,

vs.

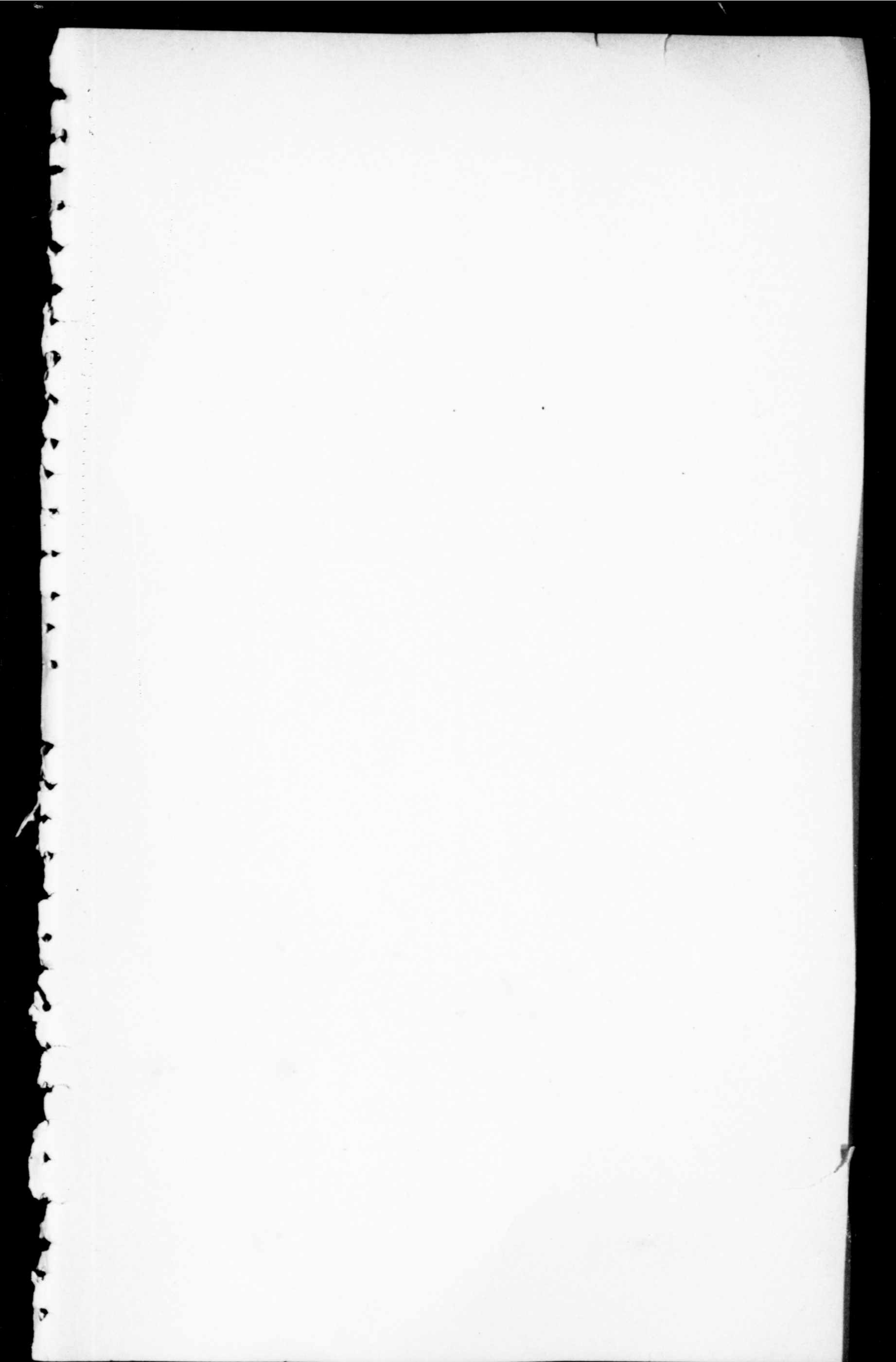
FRANKLIN K. LANE, SECRETARY OF THE INTERIOR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JULY 14, 1915.

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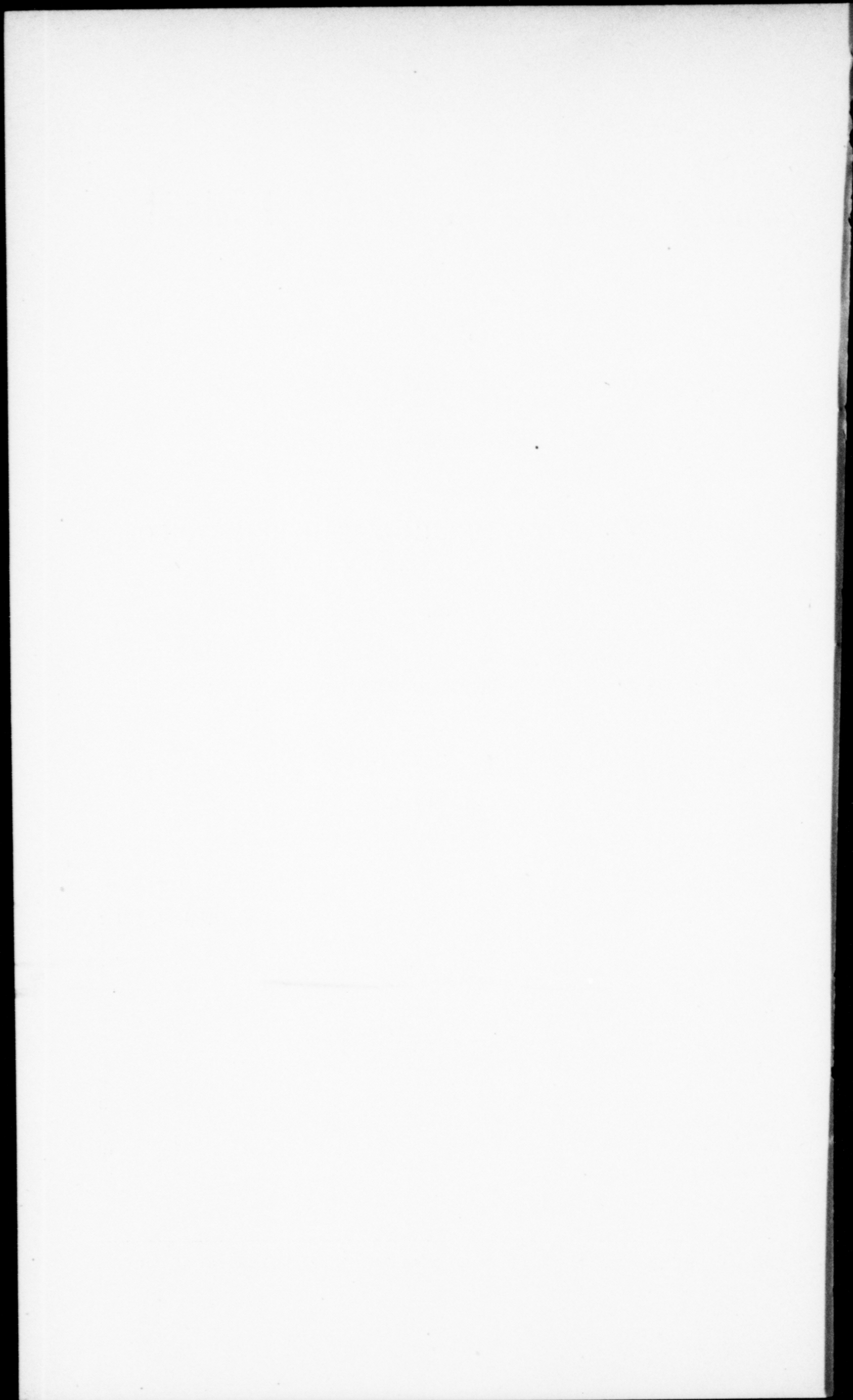
vs.

FRANKLIN K. LANE, SECRETARY OF THE INTERIOR,
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 2853.

U. S. OF A. ex Rel. WILLIAM F. ARANT, Appellant,
vs.
FRANKLIN K. LANE, Secretary of the Interior.

a Supreme Court of the District of Columbia.

At Law. No. 57986.

UNITED STATES OF AMERICA on the Relation of WILLIAM F. ARANT,
Relator,

vs.
FRANKLIN K. LANE, Secretary of the Interior, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had in the above-entitled cause, to wit:

1 *Petition for Writ of Mandamus.*

Filed April 30, 1915.

In the Supreme Court of the District of Columbia.

At Law. No. 57986.

UNITED STATES OF AMERICA on the Relation of WILLIAM F. ARANT,
Relator,

v.
FRANKLIN K. LANE, Secretary of the Interior, Defendant.

The petition of William F. Arant respectfully shows to the Court:
1. He is a citizen of the United States, commorant in the town of Klamath Falls, in the state of Oregon, and files this petition in his own right as hereinafter more fully shown.

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1915-4-30
1913-6-28

1-10-2

2. The defendant is a citizen of the United States, commorant in the District of Columbia, and is sued herein by virtue of his office as Secretary of the Interior.

3. On, to wit, the 25th day of June, 1903, relator was duly appointed superintendent of Crater Lake National Park in the state of Oregon, at a salary of one thousand dollars per annum.

By virtue of said appointment relator became and thereafter continued to be a person in the classified civil service of the United States.

In this connection relator avers that on the 31st day of August, 1912, there was sent to him, as such superintendent, by the then Secretary of the Interior, a circular letter issued by the Department of the Interior, by direction of such Secretary aforesaid, for the information of the officers and employees of said department, said circular containing an excerpt from the act of Congress making

2 appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1913, and for other purposes, approved August 24, 1912, being section six (6) of said act; with instructions to relator that he note the same and be governed accordingly.

4. Upon the appointment of relator to the position aforesaid, he entered upon the performance of the duties incident to said position and thereafter diligently, efficiently and faithfully performed the same until, to wit; the 20th day of July, 1913, when he ceased so to do under the circumstances hereinafter more fully set forth.

5. On to wit, the 7th day of June, 1913, relator, while engaged in the performance of his duties as such superintendent, as aforesaid, received from said defendant a telegraphic communication, as follows:

Washington, D. C., June 7, 1913.

"Mr. William F. Arant, Superintendent of Crater Lake National Park, Crater Lake, Oregon.

SIR: I have to request that you forward to this office your resignation as Superintendent of Crater Lake National Park.

FRANKLIN K. LANE,
Secretary of the Interior."

In response to said communication relator, on, to wit, the 17th day of June, 1913, addressed to said defendant a letter wherein he invited said defendant's attention to the fact that he, relator, was a person in the classified civil service of the United States under and by virtue of the provisions of law then existing with relation to the civil service of the United States; protested against his resignation being called for; invoked the protection of the laws relating to the civil service of the United States, and protested against his removal from office in the absence of reasons therefor in writing and notice thereof, a copy of any charges preferred against him and a

3 reasonable time within which to answer the same in writing.

In answer to said letter, relator received from said defendant a telegraphic communication as follows:

Washington, D. C., June 28, 1913.

"Supt. Arant, Crater Lake, Oreg.:

Answering letter 17th, you are hereby removed from position superintendent Crater Lake Park, effective close June 30. Transfer property new Supt. Steel July 1.

LANE, *Secretary.*"

Thereafter and on, to wit, the 7th day of July, 1913, relator received from said defendant a telegraphic communication demanding that he "account and transfer property to Supt. Steel. Failing which matter will be taken up with Department of Justice and your successor put in possession. Your pay stopped June 30."

To this communication relator replied by telegram sent said defendant, as follows:

Klamath Falls, Oregon, July 8, 1913.

"To Honorable Secretary Interior, Washington, D. C.:

Answering your telegram seventh am ready to make complete accounting but am compelled to refuse to relinquish my position or transfer property being convinced removal order unlawful.

ARANT,
Superintendent."

6. Thereafter, to wit, on Sunday the 20th day of July, 1913, the United States Marshal for the state of Oregon, claiming to be acting pursuant to instructions contained in a letter to him from the United States District Attorney at Portland, Oregon, together with said Steel and a number of other men, waited upon relator in his office as said superintendent and the said Marshal thereupon demanded of relator that he surrender possession of said office and deliver the same to said Steel.

Upon relator refusing so to surrender said office, said Marshal, with the assistance of a large number of other persons, without any lawful warrant or other legal writ or process authorizing him
4 so to do, violently and with force and arms seized relator and removed him from said office.

Said Marshal thereupon reentered the building in which said office of Superintendent was located, drove relator's family therefrom, took possession of said building and office, the property, records and fixtures pertaining to said office, together with the property and effects of relator including money, books and valuable papers. Whereupon said Marshal delivered said building and office, and the property, records and fixtures pertaining to said office into the possession of said Steel.

7. Relator further shows to the court that as such Superintendent as aforesaid he was a person in the classified civil service of the United States within the provisions of law relating to the civil service of the United States, and the rules and regulations of the United States Civil Service Commission, promulgated according to law; that at the time of his removal he was held and recognized by said Civil Service Commission to be a person in the classified civil service of the

United States, under the law and said rules and regulations; that it was the duty of said defendant to aid, in all proper ways, in carrying said rules and regulations into effect; that as a person in the classified civil service of the United States he could not be lawfully removed therefrom except for such cause as would promote the efficiency of said service and for reasons given in writing and he was entitled to notice of the same and any charges preferred against him, and to be furnished with a copy thereof, and allowed a reasonable time for personally answering the same in writing, and affidavits in support thereof.

5 8. Notwithstanding the premises aforesaid, said defendant, in violation of law and of the duty resting upon him in the premises and in violation of the rights of relator, without just cause and without reasons given in writing and without furnishing relator a copy of charges, if any, that were preferred against him, and without allowing relator reasonable or other time for personally answering the charges, if any, that were preferred against him and, in the absence of any such charges, arbitrarily, and not in the exercise of any discretion vested in him, wilfully and violently, in the manner hereinbefore more fully set forth, removed relator from his office aforesaid.

 9. Relator further shows that on, to wit; the 1st day of July, 1913, he notified said defendant, in writing, that he, relator, was ready, willing and able to perform all the duties and work pertaining to the office of Superintendent as aforesaid; and he has been so ready, willing and able to perform such duties from the time of his appointment to the present time.

10. From the time of his unlawful removal from said position as aforesaid, relator has made every reasonable effort to have his rights in the premises accorded him and to be restored to the office of Superintendent as aforesaid, but without avail.

By and through his attorneys relator has formally requested of said defendant that he restore him, relator, to the office of Superintendent, as aforesaid, but said defendant declined and refused and still refuses to comply with such request.

Wherefore, inasmuch as relator is without remedy in the premises, except a writ of mandamus to said defendant to compel him to vacate said order of June 28, 1913, removing relator from said office and to restore him to his said office of Superintendent of Crater Lake National Park in the state of Oregon, the premises considered relator prays:

6 1. That process may issue requiring the defendant to appear and answer this petition.

2. That a writ of mandamus may go to the defendant requiring him forthwith to vacate the order of June 28, 1913, and to restore the relator to the office of Superintendent of Crater Lake National Park in the state of Oregon.

3. That a rule may be laid according to law, requiring the defendant to show cause why a writ of mandamus shall not issue as prayed herein.

4. That relator may have such other and further relief as may be just and proper.

UNITED STATES OF AMERICA ON THE
RELATION OF WILLIAM F. ARANT,
By W. F. ARANT, *Relator*.

MADDOX AND GATLEY,
Attorneys for Relator.

J. H. CARNAHAN,
Of Counsel for Relator.

STATE OF OREGON,
County of Klamath, ss:

William F. Arant, being first duly sworn, deposes and says: I am the relator in the foregoing petition by me subscribed; I have read over the foregoing petition and know the contents thereof; the matters and things therein stated on personal knowledge are true and those stated on information and belief, I believe to be true.
W. F. ARANT.

Subscribed and sworn to before me this 23rd day of April, A. D. 1915.

[SEAL.]

PERRY O. DE LAP,
Notary Public.

7

Memorandum.

April 30, 1915.—Rule to Show Cause issued returnable May 11, 1915.

Return to Rule to Show Cause.

Filed May 10, 1915.

* * * * *

Comes now Franklin K. Lane, Secretary of the Interior, respondent in the above-entitled cause, and in answer to the rule to show cause why mandamus should not issue as prayed in relator's petition, says:

1-2. He admits the allegations of paragraphs 1 and 2.

3. Answering the allegations of paragraph 3, he states the facts to be as hereinafter set forth and not otherwise, to wit that on September 26, 1902, relator became by appointment of the then Secretary of the Interior, Superintendent of Crater Lake National Park, at a salary of \$900, and thereafter, effective from July 1, 1903, his salary was increased to \$1,000; that said appointment was made without examination, directly by the Secretary and in no manner through or on certification from or with the knowledge or action in any manner by the Civil Service Commission, or with regard to civil service rules, for the reason that the position of superintendent of said park was and is in the "excepted" class of the public civil service

according to Schedule A of the Rules and Regulations of said Civil Service Commission; that such appointment in such manner was and is purely a personal appointment, the tenure being at the pleasure of the appointing power; that while the relator under such appointment may be said to have become a person in the classified
8 civil service of the public service as distinguished from the military, naval, legislative, or judicial service of the United States, he did not thereby acquire a personal civil service status rendering him eligible for appointment or transfer to any place in such service not excepted from examination, competitive or otherwise, and is not a person in the "classified civil service" whose removal from the position he occupied was required by law to be accomplished in any manner other than that followed in regard to relator. And as to the allegations of the last paragraph of said paragraph 3, while he has no personal knowledge of the transmittal of the alleged circular, he says that such was probably the fact because it was and is the custom to transmit circulars of information from time to time for the guidance of officers in immediate charge of employees in the several branches and stations of departmental work. Except as herein admitted by the foregoing averment, he denies otherwise the averments of said paragraph 3; and he further denies that the sending or not sending of any such circular would be at all material to any issue in this case.

4. Answering the allegations of paragraph 4, he denies that relator has efficiently and faithfully performed the duties incident to his position during his incumbency thereof; otherwise he admits the averments of said paragraph.

5. He admits the allegations of paragraph 5, except that the communication dated June 7, 1913, was by telegram stating the fact to be that said communication was by letter personally signed by the respondent, in words and figures as follows:

9

Department of the Interior,
Washington, June 7, 1913.

Mr. William F. Arant, Klamath Falls, Oregon.

SIR: I have to request that you tender your resignation as Superintendent of Crater Lake National Park, to take effect upon the appointment and qualification of your successor.

Respectfully,

FRANKLIN K. LANE, *Secretary*.

6. He admits that the United States Marshal for the District of Oregon, acting under directions from the Department of Justice, but duly, lawfully, and without unnecessary force, ousted relator from the room or place theretofore occupied by him as an office and from the buildings of the United States which he was then, on the date stated in paragraph 6, unlawfully occupying and withholding from the possession of the person officially authorized and directed to occupy and possess the same; but respondent says that the means or manner of relator's removal from said places and buildings is in no manner material to any issue in this cause.

7. He is advised and therefore avers that the allegations of paragraph 7 amount to conclusions of law which he need not answer; but he says that relator was not a person in the classified civil service of the United States and can be so denominated only in the sense and with the limitations hereinbefore set forth in answer to paragraph 3 of said petition; that during his incumbency of said office, the Civil Service Commission had no record or official knowledge of his appointment to or incumbency of said office; and that it is not true that by virtue of relator's said appointment to and occupation of said office, he became a person in the classified civil service in the sense that he could not be removed therefrom without written

10 charges or reasons therefor and with notice thereof, under any existing law and especially under the provisions of section 6 of the act of August 24, 1912, in this that it was not within the intent or purpose of Congress in enacting said last-mentioned law to make its provisions applicable, in using the term "the classified civil service", other than to those in the competitive branch thereof, to which the relator neither belonged nor was eligible to belong.

8. He denies the allegations of paragraph 8 save in this that he admits that for reasons deemed by him sufficient and without writ of said park, upon relator's refusal to resign; and that in so doing he was acting upon the advice and following the opinion of the Attorney General of the United States, as to his authority to make removals in the manner above set out.

9. He admits the allegations of paragraph 9 in so far as it avers notification in writing (the correct date whereof being July 31, 1913, and not July 1, 1913, as averred) by relator to respondent that he was ready, willing, and able to perform all the work and duties of superintendent of said park, but denies that relator has been ready, willing, and able to perform such duties from the time of his appointment to the present time and states the fact to be that prior to June 7, 1913, and up to July 1, 1913, he was not performing said duties to the satisfaction of respondent; and whether since July 1, 1913, he has been willing and able to perform such duties, respondent has no knowledge other than as set forth in the petition.

10. He denies the allegations of paragraph 10 to the extent that the same attempt to show that he has made every reasonable effort to be restored to the office of superintendent as aforesaid, in this: That if relator were improperly or unlawfully removed

11 from said office, under circumstances such as to justify the interference of the courts, such condition existed immediately upon relator's removal from office and upon the Secretary's refusal to continue him in said office; notwithstanding which and notwithstanding that since said time, to wit, July 1, 1913, another person has been appointed to and has discharged the duties of said office and has received the salary and allowance therefor appropriated from time to time by Congress, the relator did not seek recourse to the courts until the lapse of nearly two years, and therein has by his gross laches barred any right to the relief sought if any such right ever existed.

Wherefore, having made complete return to the rule herein issued, he prays that the same may be discharged, that the petition may be dismissed with his reasonable costs, and that he may be permitted to go hence without day.

FRANKLIN K. LANE,
Secretary of the Interior.

PRESTON C. WEST,
Solicitor for the Department of the Interior.
C. EDWARD WRIGHT,
Assistant Attorney.

DISTRICT OF COLUMBIA, ss:

Franklin K. Lane, Secretary of the Interior, being first duly sworn, says that he has read over the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein set forth he is informed are true and he believes them to be true.

FRANKLIN K. LANE,
Secretary of the Interior.

12 Subscribed and sworn to this 8th day of May, 1915. Be-
fore me
[SEAL.] W. BERTRAND ACKER,

Notary Public in and for the District of Columbia.

(Endorsed.)

Service acknowledged May 10, 1915.

MADDOX AND GATLEY,
Att'y- for Relator.

Demurrer to Return.

Filed May 15, 1915.

* * * * *

The Relator says that the return of the defendant to the rule to show cause, heretofore issued herein, is bad in substance.

1. Because no cause is shown in and by said return why a writ of mandamus should not issue as prayed in the Relator's petition.

2. Because under the admitted facts of said return the Relator is entitled to the issuance of a writ of mandamus as prayed in and by his petition.

MADDOX AND GATLEY,
J. H. CARNAHAN,
Attorneys for Relator.

Messrs. Preston C. West and C. Edward Wright, Attorneys for Defendant:

Please take notice that the foregoing demurrer will be heard before Mr. Justice Stafford on Monday, the 24th day of May, 1915, at three o'clock P. M., or as soon thereafter as counsel can be heard.

MADDOX AND GATLEY,
J. H. CARNAHAN,
Attorneys for Relator.

13 *Order Overruling Demurrer and Dismissing Petition.*

Filed June 15, 1915.

* * * * *

This cause coming on to be heard upon the demurrer of the relator to the return of the defendant after consideration thereof, it is, this 15th day of June, 1915, ordered that said demurrer be and the same is hereby overruled. And said relator electing to stand upon his demurrer, it is further ordered that the petition of relator be dismissed with costs.

WENDELL P. STAFFORD, *Justice.*

From the foregoing judgment the relator in open court notes an appeal to the Court of Appeals and the penalty of a bond for costs on said appeal is hereby fixed at \$100, with leave to said relator to deposit in lieu of such bond the sum of \$50.00.

WENDELL P. STAFFORD, *Justice.*

Memorandum.

June 28, 1915.—Appeal bond approved and filed.

Assignment of Errors.

Filed June 28, 1915.

* * * * *

1. The court erred in overruling relator's demurrer to the return of defendant and dismissing relator's petition.

2. The court erred in holding that relator was not a person in the classified Civil Service of the United States within the meaning of Section 6 of the Act of Congress approved August 24, 1912.

MADDOX AND GATLEY,
Attorneys for Relator.

14 *Designation of Record.*

Filed June 28, 1915.

* * * * *

The Clerk will please prepare transcript of record on appeal and include therein the following:

1. Petition of Relator;
2. Memorandum Rule to show cause;
3. Return of Defendant to Rule;
4. Demurrer to Return;
5. Order overruling demurrer and dismissing petition;
6. Memorandum appeal bond filed;
7. Assignment of Errors;
8. This designation.

MADDOX AND GATLEY,
Attorneys for Relator.

15 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 14, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 57,986, At Law, wherein United States of America, on the Relation of William F. Arant is Plaintiff and Franklin K. Lane, Secretary of the Interior, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 9th day of July, 1915.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2853. U. S. of A. ex rel. William F. Arant, appellant, vs. Franklin K. Lane, Secretary of the Interior. Court of Appeals, District of Columbia. Filed Jul-14, 1915. Henry W. Hodges, clerk.

